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18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 LAURIE GIBBS HARRIS,

20 Case No. 10-01763 CW

21 Plaintiff,

21 **STIPULATION AND ORDER**
22 **CONTINUING HEARING ON**
22 **DEFENDANTS' SUMMARY JUDGMENT**
22 **MOTION AND TRIAL DATE**

23 [Current Trial Date: October 3, 2011]

24 NORTHWESTERN INVESTMENT
24 MANAGEMENT COMPANY, LLC,
24 NORTHWESTERN MUTUAL LIFE
24 INSURANCE COMPANY, and DOES 1
25 through 20 , inclusive,

26 Defendants.

1 Plaintiff Laurie Gibbs Harris (“Plaintiff”) and Defendants Northwestern Investment
 2 Management Company, LLC and Northwestern Mutual Life Insurance Company (“Defendants”),
 3 the parties to the above-entitled action (collectively, the “Parties), submit this stipulation to the
 4 Court:

5 **STIPULATION**

6 WHEREAS, on April 26, 2011, the Court granted the Parties’ *Stipulation* and scheduled
 7 June 30, 2011 as the last day by which the Court must hear all case-dispositive motions and the
 8 date of the next Case Management Conference in this matter;

9 WHEREAS, the parties have not otherwise sought and the Court has not ordered time
 10 modifications;

11 WHEREAS, on May 26, 2011, Defendants filed and served their *Motion for Summary*
 12 *Judgment, or in the Alternative, Partial Summary Judgment* and supporting documents, and
 13 noticed hearing on said Motion for June 30, 2011;

14 WHEREAS, pursuant to Civil Local Rule 7-3, Plaintiff’s deadline for filing her opposition
 15 to Defendants’ Motion was June 9, 2011;¹

16 WHEREAS, on June 9, 2011 Plaintiff filed and served her *Opposition* to Defendants’
 17 Motion, as well as declarations of Laurie Gibbs Harris, John A. McGuinn, and Craig Pratt in
 18 support of her *Opposition*;

19 WHEREAS, Plaintiff’s *Declaration of John A. McGuinn* and *Declaration of Craig Pratt*,
 20 filed and served on June 9, 2011, did not include complete sets of the exhibits attached to the
 21 declarations as evidence in support of Plaintiff’s *Opposition*;

22 WHEREAS, on Monday, June 13, 2011, Plaintiff sent by email at 4:20 p.m. to
 23 Defendants’ counsel a courtesy copy of an *Amended Opposition* and a *Supplemental Declaration*
 24 of *John A. McGuinn*;

25 WHEREAS, today, Tuesday, June 14, 2011, Plaintiff intends to file with the Court her
 26 *Amended Opposition* and *Supplemental McGuinn Declaration*;

28 ¹ The deadline for Plaintiff to file her opposition brief was June 9, 2011 pursuant to both the pre-June 2, 2011 Civil
 MORGAN, LEWIS & BOCKIUS LLP
 ATTORNEYS AT LAW
 PALO ALTO
 DB2/ 22496897.1

1 WHEREAS, today, Tuesday, June 14, 2011, Plaintiff intends to withdraw the declaration
 2 of Craig Pratt;

3 WHEREAS, of the documents Plaintiff filed on June 9, 2011, she filed the *Declaration of*
 4 *John A. McGuinn* under seal and submitted a corresponding administrative motion requesting that
 5 the declaration and its exhibits be filed under seal;

6 WHEREAS, the additional documents Plaintiff filed on June 9, 2011 (her *Opposition* brief
 7 and the *Declaration of Laurie Gibbs Harris*) also contained confidential information pursuant to
 8 the Parties' *Stipulated Protective Order* approved by the Court on November 30, 2010, but were
 9 filed without the protections of filing under seal;

10 WHEREAS, today, Tuesday, June 14, 2011, Plaintiff intends to request that all
 11 confidential materials be filed under seal (including the *Opposition*, *Amended Opposition*,
 12 *McGuinn Declaration*, *Supplemental McGuinn Declaration*, *Harris Declaration*) and that
 13 documents previously filed on June 9, 2011 be "locked" from public access;

14 WHEREAS, the Parties have met and conferred regarding the above confidentiality issues
 15 and amended and supplemental documents, and agree that to avoid prejudice to Defendants,
 16 Defendants' should have additional time to respond to Plaintiff's *Opposition* and supporting
 17 papers;

18 WHEREAS, pursuant to Civil Local Rule 7-3, Defendants' current deadline for filing
 19 their reply brief is June 16, 2011;²

20 WHEREAS, the next available hearing on the Court's calendar after the current hearing
 21 date is July 14, 2011;

22 WHEREAS, under the pre-June 2, 2011 Civil Local Rules, applicable with respect to
 23 Defendants' Motion, if the hearing on the Motion is scheduled for July 14, 2011, Defendants'
 24 reply brief would be due no later than June 30, 2011;

25 WHEREAS, a continuance of the hearing on the Motion alone would not require
 26 modification to the current October 3, 2011 trial date;

28 2 The current deadline for Defendants to file their reply brief is June 16, 2011 pursuant to both the pre-June 2, 2011
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 PALO ALTO
 DB2/ 22496897.1

1 WHEREAS, the Parties engaged in an Early Neutral Evaluation on December 16, 2010;

2 WHEREAS, as part of the meet and confer process in which the Parties have engaged
3 throughout the litigation of this matter following the Early Neutral Evaluation, the Parties have
4 discussed whether it would be fruitful to continue to attempt to resolve this matter through
5 mediation;

6 WHEREAS, the Parties agree that it is in the best interests of their respective clients to
7 pursue mediation at this time, and have confirmed that they may mediate this matter with a
8 neutral third party, Mark S. Rudy of Rudy, Exelrod, Zieff & Lowe LLP;

9 WHEREAS, the Parties have yet been unable to confirm a mediation date with Mr. Rudy,
10 but the Parties anticipate that due to Mr. Rudy's schedule, a mediation date will not be available
11 prior to September 2011;

12 WHEREAS, in light of the above factors, the Parties have agreed to seek a continue of the
13 Motion hearing date, as well as the trial date and other case deadlines connected to the trial date,
14 so that the Parties may attempt to resolve this matter through mediation.

15 THEREFORE, the Parties, through their respective counsel of record, hereby
16 STIPULATE to continue the hearing on Defendants' *Motion for Summary Judgment, or in the*
17 *Alternative, Partial Summary Judgment* to a date subject to the Court's convenience and
18 availability that is approximately one month following the completion of mediation with Mr.
19 Rudy, and that the last day for Defendants to file their reply brief shall be two weeks prior to the
20 hearing. They further stipulate that the Case Management Conference be continued to the same
21 day as the hearing on Defendants' Motion. The Parties further stipulate that the trial date be
22 continued to a date of the Court's convenience and availability that is between three and four
23 months following the hearing on Defendant's Motion, and that additional pre-trial case deadlines
24 be reset in accordance with the rescheduled trial date. The Parties agree to inform the court when
25 they are able to confirm that exact date of their scheduled mediation.

26 IN THE ALTERNATIVE, if the Court does not grant approval to continue the trial date to
27 allow the Parties to pursue mediation, the Parties, through their respective counsel of record,

1 hereby STIPULATE to continue the hearing on Defendants' *Motion for Summary Judgment, or in*
 2 *the Alternative, Partial Summary Judgment* to July 14, 2011, or thereafter, subject to the Court's
 3 convenience and availability, and that the last day for Defendants to file their reply brief shall be
 4 June 30, 2011. They further stipulate that the Case Management Conference be continued to July
 5 14, 2011, and that the deadlines for disclosures of identities and reports of expert witnesses and
 6 for completion of expert discovery be moved by two weeks to July 19, 2011 and August 17,
 7 2011, respectively.

8 IN THE ALTERNATIVE, should the Court instead desire, despite the Parties stipulation,
 9 to maintain the current hearing date of June 30, 2011, the Parties hereby STIPULATE that the last
 10 day for Defendants to file their reply brief shall be June 22, 2011.

11 IT IS SO STIPULATED.

13 DATE: June 14, 2011

/s/ Carolyn A. Leary

14
 15 John A. McGuinn
 Carolyn A. Leary
 McGuinn, Hillsman & Palefsky
 16 Attorneys for Plaintiff, Laurie Gibbs Harris

17 DATE: June 14, 2011

/s/ Megan Barry Borovicka

18 Melinda S. Riechert
 19 Megan Barry Borovicka
 20 Morgan, Lewis & Bockius

21 Attorneys for Defendants,
 22 Northwestern Investment Management Company,
 LLC and Northwestern Mutual Life Insurance
 23 Company

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

2 The hearing on Defendants' *Motion for Summary Judgment, or in the Alternative, Partial*
3 *Summary Judgment* shall be continued to July 14, 2011, and the last day for Defendants to file
4 their reply brief shall be June 30, 2011. The Case Management Conference is continued to July
5 14, 2011. The deadlines for disclosures of identities and reports of expert witnesses and for
6 completion of expert discovery are scheduled for July 19, 2011 and August 17, 2011,
7 respectively.

8 DATE: 6/20/2011



9
10 The Honorable Claudia Wilken
11 United States District Judge

12 **ATTESTATION**

13 Pursuant to General Order 45(X), I attest that concurrence in the filing of this document
14 has been obtained from the other signatory.

15 Dated: June 14, 2011

16 By: /s/ Megan Barry Borovicka
Megan Barry Borovicka